

REMARKS

Applicant cancelled claims 1-14, 16-29, and 33 without prejudice or disclaimer of their subject matter and to further define Applicant's claimed invention.

In the Office Action, the Examiner rejected claims 1-14 and 16-33 under the judicially created doctrine of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,078,899 and claim 1-17 of U.S. Patent No. 5,799,283. Applicant is submitting concurrently with this Amendment a Terminal Disclaimer of the terminal part of any patent granted in the present application which would extend beyond the expiration of U.S. Patent Nos. 5,799,283 and 6,078,899. Applicant submits that the obviousness-type double patenting rejection has been overcome.

The Examiner rejected claims 1-5, 7-11, 13, 14, 16-20, 22-26, and 28-33 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,918,213 to Bernard et al. ("Bernard"), and further in view of U.S. Patent No. 6,640,304 to Ginter et al. ("Ginter"). Applicant cancelled claims 1-14, 16-29 and 33 without prejudice or disclaimer of their subject matter, thus rendering the rejections of those claims moot.

Applicant submits that claims 30-32 are supported by the disclosure of U.S. Application No. 08/438,890 (now U.S. Patent No. 5,799,283 (the "'283 patent'")), filed May 10, 1995. Applicant submits that independent claim 30 is supported at least at col. 3, lines 29-30; col. 5, lines 25-27 and 59-61; col. 5, line 65 to col. 6, line 4; col. 7, lines 6-7; and Figs. 3(a) and 3(b) of the '283 patent. Applicant submits that dependent claim 31 is supported at least at col. 5, lines 40-43 of the '283 patent. Applicant submits that independent claim 32 is supported at least at col. 1, lines 5-9; col. 5, lines 25-27, 40-43 and 57-61; col. 6, lines 35-37; col. 7, lines 6-7; and Figs. 3(a) and 3(b) of the '283 patent. Accordingly, claims 30-32 are entitled to the priority date of May 10, 1995.

The earliest filing date of Bernard is December 22, 1995. Accordingly, Bernard is not prior art to the claims of the present invention. Based at least on this reason,

Applicant submits that the rejection of claims 30-32 under 35 U.S.C. § 103(a) as being unpatentable over Bernard in view of Ginter has been overcome.

Moreover, Applicant is submitting concurrently herewith a Declaration of Paul A. Francisco and Frederick J. Petschauer under 37 C.F.R. § 1.131 establishing conception of the claimed invention prior to the earliest effective filing date of Ginter, coupled with due diligence up to the earliest filing date of the present application. Applicant respectfully submits that the Ginter reference has been removed.

By establishing a date of invention prior to the earliest effective filing date of Ginter, Applicant does not concede that Ginter anticipates or renders obvious Applicant's claimed invention, and reserves the right to make such arguments if necessary in this application and/or in related applications or patents.

The Examiner rejected claims 6, 12, 21, and 27 under 35 U.S.C. § 103(a) as being unpatentable over Bernard, further in view of Ginter, and further in view of U.S. Patent No. 5,774,872 to Golden et al. Applicant submits that this rejection is moot in view of the cancellation of claims 6, 12, 21, and 27.

Applicant submits that independent claims 30 and 32 are patentable and that dependent claim 31 dependent from independent claim 30, is patentable at least due to its dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims, as amended, are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including

any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-1068.

Respectfully submitted,

MARTIN & FERRARO, LLP

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By: /Amedeo F. Ferraro/
Amedeo F. Ferraro
Registration No. 37,129

17383 Sunset Boulevard, Suite 250
Los Angeles, California 90272
Telephone: (310) 286-9800
Facsimile: (310) 286-2795